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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,045	03/26/2004	Fred William Chapman	1023-241US01	7893

28863 7590 12/28/2005

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EXAMINER	
REIDEL, JESSICA L	

ART UNIT	PAPER NUMBER
3766	

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/810,045	CHAPMAN ET AL.	
	Examiner	Art Unit	
	Jessica L. Reidel	3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-59* is/are pending in the application.

4a) Of the above claim(s) *1-18 and 46-59* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-29, 32, 34-42 and 45* is/are rejected.

7)☒ Claim(s) *30,31,33,43 and 44* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *26 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 04/04, 11/04, 05/05, 06/05, 07/05, 09/06, 11/05
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Claims 19-45 in the reply filed on November 14, 2005 is acknowledged.

Priority

2. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Information Disclosure Statement

3. The information disclosure statements (IDS) submitted on April 23, 2004, November 19, 2004, May 20, 2005, June 16, 2005, July 27, 2005, September 23, 2005 and November 23, 2005 have been acknowledged and are being considered by the Examiner.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 19, 21, 24-25, 28-29, 32, 34-35, 37, 39, 41-42 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole (U.S. 5,836,993). As to Claims 19, 29, 32, 37, 42 and 45, Cole discloses an external defibrillator 10 comprising an energy delivery system, read as a therapy delivery module 14, and a controller, read as a processor 12 (see Cole Figs. 1 and 12 and column 4, lines 55-65). Cole discloses that the processor 12 may be embodied via a microprocessor, controller, gate array or other control logic or any combination of such elements

(see Cole column 4, lines 62-65). It is inherent that a microprocessor-based processor 12 comprises a computer readable medium comprising the instructions (retrieved from a first memory 16 or a second memory 22) that cause the processor 12 to carry out the disclosed invention. The processor 12 of Cole delivers therapy to patient via defibrillator 10 according to a general profile (i.e. the patient is an adult and the instructions are stored on a first memory 16) and a profile associated with an "anticipated patient" (i.e. the patient is a child and the instructions are stored on a second memory 22) (see Cole column 5, lines 14-27 and lines 66-67 and column 6, lines 1-6). The Examiner takes the position that since a user has to attach the removable memory 22, treating a child or pediatric patient is "anticipated by the user" and thus this type of patient is synonymous with an "anticipated patient". Cole also discloses that the processor 12 determines whether a patient is an "anticipated patient" via actuator 24. Specifically, when the actuator 24 is not actuated, the processor 12 determines that the patient is the not an "anticipated pediatric/child" patient and retrieves instructions for general adult therapy delivery from first memory 16. When a user actuates the actuator 24, upon attachment of the removable second memory 22, the processor 12 determines that the patient is an "anticipated" patient and retrieves instructions for pediatric therapy delivery from the second memory 22 (see Cole column 5, lines 28-43 and lines 66-67 and column 6, lines 1-6).

6. As to Claims 21 and 39, the Examiner takes the position that since Cole discloses that the second memory 22 contains instructions used by the processor 12 to treat small children (i.e. instructions associated with the anticipated pediatric patient) and that the memory may be a solid state PC card (see Cole column 6, lines 4-6 and lines 47-55), the second memory 22 is synonymous with a patient identification device associated with the anticipated patient. In

addition, Cole discloses that the external defibrillator 10 further comprises a port, read as an input circuit 20, and the processor 12 receives an indication from a patient identification device associated with the anticipated patient 22 via the actuator 24 of the input circuit 20 and determines whether the patient is the anticipated patient based on the indication (actuated or not) (see Cole Figs. 1-2 and column 5, lines 28-44).

7. As to Claims 24 and 41, Cole discloses that the external defibrillator 10 further comprises a port, read as an input circuit 20, and that the profile associated with the anticipated pediatric patient is stored within an attachable second memory 22 (see Cole Figs. 1-2 and column 5, lines 28-44). The Examiner takes the position that since Cole discloses that the second memory 22 contains instructions used by the processor 12 to treat small children, the second memory is associated with the anticipated pediatric patient (see Cole column 6, lines 4-6 and lines 47-55). Cole also discloses that processor 12 retrieves the profile associated with the anticipated pediatric patient from the second memory 22 via the input circuit 20 and determines that the patient is the anticipated patient based on receipt (indication from actuation of actuator 24) (see Cole Figs. 1-2 and column 5, lines 28-44).

8. As to Claim 25, Cole discloses that the memory 22 associated with the anticipated pediatric patient is a removable medium for the defibrillator 10 (see Cole column 5, lines 17-27).

9. As to Claim 28, Cole disclose that the second memory 22 may be disposed at a location remote from device 10 and could communicate the processor's 12 instructions to the device from the remote location through input circuit 20 via a remote connection 48. Cole further discloses that the remove connection 48 may be a network (see Cole column 6, lines 30-46).

10. As to Claim 34, the second attachable memory 22 of Cole contains instruction sufficient to operate the device to treat the patient via the anticipated pediatric profile (see Cole column 5, lines 28-52 and line 66-67 and column 6, lines 1-6).

11. As to Claim 35, the first memory 16 of Cole contains instructions sufficient to operate the device to treat the patient via the general adult profile or non-anticipated patient profile (see Cole column 5, lines 14-27 and line 66-67 and column 6, lines 1-6).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

13. Claims 20 and 38 are rejected under 35 U.S.C. 103(a) as being obvious over Cole in view of Jayne et al. (U.S. 2003/0195567) (herein Jayne).

The applied reference has a common Assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in

the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Cole discloses the claimed invention as discussed above except that the processor does not receive an indication from a user via a user interface and thusly determine that a patient is an anticipated patient based on that indication. Jayne, however, discloses an automated external defibrillator that automatically determines the type of patient to which it is attached based on patient-specific information entered by the user (see Jayne page 1, paragraph 8). Jayne also discloses that the AED automatically determines the dosage for a defibrillation pulse to be delivered to a patient based on the patient determination and the AED may automatically modify the information output to the user based on the determination (see Jayne page 2, paragraph 22). Jayne does not explicitly state why a user interface is used to provide the processor with an indication as to what type of patient needs treatment, but it appears that a user interface is used to eliminate the need for a patient to carry around a patient identification data/removable memory card. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the defibrillator as taught by Cole, with a user interface as taught by Jayne, since such a modification would provide the defibrillator with a user interface for providing the processor with an indication as to what type of patient needs treatment without the need of a patient identification card or card reader.

14. Claims 22, 26-27 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole. As to Claims 22 and 26, Cole discloses the claimed invention as discussed above but does

not expressly disclose the radio frequency identification (RFID) device that is interrogated by the defibrillator 10. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the defibrillator as taught by Cole with the RFID, because Applicant has not disclosed that the RFID provides an advantage, is used for a particular purpose, or solves a stated problem. One or ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the PC card as taught by Cole, because it provides a removable memory/patient identification device associated with the anticipated pediatric patient easily interrogated by the defibrillator and since it appears to be an arbitrary design consideration which fails to patentably distinguish over Cole.

Therefore, it would have been an obvious matter of design choice to modify Cole to obtain the invention in as specified in the claim(s).

15. As to Claim 27, Cole discloses the claimed invention as discussed above but does not expressly disclose the that the memory 22 associated with the anticipated pediatric patient comprises a memory within a consumer electronic device. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the defibrillator as taught by Cole with a memory within a consumer electronic device, because Applicant has not disclosed that such a memory provides an advantage, is used for a particular purpose, or solves a stated problem. One or ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the PC card as taught by Cole, because it provides a removable memory/patient identification device associated with the anticipated pediatric patient easily interrogated by the defibrillator and since it appears to be an arbitrary design consideration which fails to patentably distinguish over Cole.

Therefore, it would have been an obvious matter of design choice to modify Cole to obtain the invention in as specified in the claim(s).

16. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Rockwell et al. (U.S. 6,141,584) (herein Rockwell). Cole discloses the claimed invention as discussed above except that the external defibrillator 10 is not specified to be an automated external defibrillator (AED).

Rockwell, however, teaches that AEDs can automatically analyze the electrocardiogram (ECG) rhythm of a patient to determine if defibrillation is necessary and thus prompt the responder/user to press a shock button to deliver the defibrillation shock to the patient. Rockwell also discloses that AEDs are designed to be used primarily by first responders who may not be trained in advanced cardiac life support (ACLS) techniques, advancing the versatility of who may use the device to treat a patient (see Rockwell column 1, lines 44-67). It would have been obvious to one having ordinary skill in the art at the time the invention was mode to modify the system of Cole in view of Rockwell to include an AED in order to provide a more user friendly and versatile external defibrillator that may be used by responders/users not trained in ACLS techniques.

17. Claims 23 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole in view of Brodard (U.S. 5,285,781). Cole discloses the claimed invention as discussed above except that the second memory 22 does not comprise one of a plurality of anticipated patient profiles each associated with one of a plurality of anticipated patients.

Brodard, however, discloses electrical stimulation apparatuses 2, 50 controlled by detachable and interchangeable information mediums 4, 53, previously programmed as a

function of the treatment for each respective patient (see Brodard Abstract, Figs. 1a-1b, column 5, lines 35-42, column 6, lines 13-14 and column 7, lines 18-63). Brodard further discloses that detachable and interchangeable information mediums 4, 53 may be realized in a microchip card having the format of a credit card containing live memories or RAM (see Brodard column 9, lines 40-60). The Examiner takes the position that the electrical stimulation apparatuses of Brodard are analogous with the electrical stimulation apparatus of external defibrillator 10 of Cole since both receive data/memory cards to control their therapeutic outputs. Brodard does not explicitly state why the detachable and interchangeable information mediums 4, 53, previously programmed as a function of the treatment for each respective patient are used, but it appears that such a detachable and interchangeable information medium is used to personalize the therapeutic output of the stimulation apparatus per patient. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Cole, with the detachable and interchangeable information mediums previously programmed as a function of the treatment for one of a plurality of patients as taught by Brodard, since such a modification would provide the system with personalized memory cards for providing personalized defibrillation treatment.

Allowable Subject Matter

18. Claims 30-31, 33 and 43-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica L. Reidel whose telephone number is (571) 272-2129. The examiner can normally be reached on Mon-Thurs 7-4:30 and every other Friday 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica L. Reidel
Examiner
Art Unit 3766

Jessica L. Reidel 12/21/05

Robert E. Pezzuto
Supervisory Patent Examiner
Art Unit 3766